

GRIEVANCE REDRESSAL FORUM,
AKOLA ZONE, AKOLA.

“ Vidyut Bhavan ” Ratanlal Plot, Akola. Tel No 0724.2434475

ORDER.

Dt. 13/07/2017

Complaint No.26/2017

In the matter of grievance pertaining to abrupt reclassification of consumer with retrospective effect and withdrawal of assessment thereof.

Quorum

Shri. R.A. Ramteke ,Member-Secretary

Shri. D.M.Deshpande-Member (CPO)

M/S.D.C. Mehata , Petrol pump, :- Complainant
Karanja Road, Mangrulpir
Distt. Washim
Comm.-316120014762

.....Vrs.....

Executive Engineer, O&M Division,
MSEDCL, Washim :- Respondent.

Appearances :-

Complainant Representative :- Shri Ashish S.Chandarana
Respondent Representative :- Shri S.S.Deshpande, Dy.E.E.,Mangrulpir

1. On being aggrieved by the fact that MSEDCL authority Dy. Executive Engineer to whom grievance was submitted on 10.02.2017 has neither resolved the grievance nor directed complainant to IGRC or forwarded the grievance to IGRC within two months, hence the complainant has approached this forum under provision of section 6.2 of MERC CGRF regulation read with section 6.4 at MERC regulation 2006.

2. According to complainant though The NA-MSEDCL have charged assessment bill under section 126 of E.A. 2003, CGRF have jurisdiction

under section 6.8 of MERC regulation-2006 to decide on the facts of the case whether prima facie it is a case of unauthorised use of electricity under section 126 of E.A-2003. According to complainant the grievance is not prima facie pertains to unauthorised use of electricity as charged by and hence prays before CGRF to admit the complaint and decide on the merit of the case under change of tariff and abrupt reclassification.

3. The complainant's case in brief is that on 20.11.1970 NA-MSEDCL have released electric connection for the purpose of "PETROL PUMP". The tariff chargeable was industrial as per relevant tariff order applicable, till it was changed to commercial from 16.08.2012 by MERC by order in case No. 19/2012. According to complainant regulation 13 of supply code regulation 2005 casts duty upon MSEDCL to reclassify the tariff based on MERC approved tariff order. According to complainant NA-MSEDCL have failed to classify the 'petrol pump' in commercial category and continued to bill under industrial tariff till receipt of provisional assessment dated 20.01.2017 received from NA-MSEDCL with endorsement as -----

Consumer activity :- Commercial

Tariff applied :- LTVB.

Tariff applicable :- LTII

According to complainant the endorsement as above by MSEDCL clearly depicts that the matter is not pertaining to unauthorised use of electricity under section 126 E.A. 2003 but of wrong application of tariff by MSEDCL. According to complainant the remark which is reproduced below by the inspecting officer of vigilance on spot inspection report dated 12.01.2017 pertains to wrong applicability of tariff and nowhere the findings of 'unauthorised use' recorded by vigilance officer.

" On inspection and physical verification, it is found that as per bill produced by the consumer, the billing done is LT-V(B) (industrial) whereas the

Petrol Pump should be billed in LT-II commercial category. Hence the case of change of tariff from LT-V(B) to LT-II commercial u/s 126 of Electricity act-2003, amended in 2007 and submitted for billing” , it is alleged.

4. According to complainant the activity of petrol pump is being carried out since 20.11.1970 and energy bills issued by NA-MSEDCL are paid regularly. According to complainant the purpose of use is never changed since beginning till the date of inspection on 12.01.2017 by vigilance. According to complainant flying squad, Gondia, inspected the petrol pump on 12.01.2017 where-in no adverse observation of unauthorised use were recorded by vigilance but assessment under section 126 of E.A.-2003 was carried out wrongly for simple change of tariff. According to complainant assessment bill dated 20.01.2017 was despatched under covering letter dated 19.01.2017 with outward No. As 389(B) , only to show apparently that bill is issued within 7 days which is requirement under section 126 of E.A.-2003. According to complainant the above mentioned transaction is fishy and needs to be explained by NA-MSEDCL. On receipt of assessment bill belatedly, objection was submitted to S.D.O. Mangrulpir with copy to Flying Squad, Gondia, without any action by NA-MSEDCL. According to complainant industrial tariff was applicable till 16.08.2012 when MERC reclassified, petrol pump in Commercial category. It is alleged by complainant that NA-MSEDCL's action to reclassify petrol pump as per circular PR-3/Tariff/684/36692 dt.11.10.2007 under commercial is against regulation 13 of supply code regulation 2005 where-in power are delegated to commission to reclassify the tariff. According to complainant no unlawful act is done by him and NA-MSEDCL have neglected their duty, in not charging as per MERC tariff order for which complainant should not suffer. Complainant referred CGRF case No. 346/2010 of Bhandup; Ombudsman Nagpur representation No. 55 of 2016, in support of his complaint about Non-applicability of section 126 of E.A.-2003. According to complainant reclassification of complainant's petrol pump from

industrial to commercial from 12.01.2017, the date of inspection, is acceptable and correct and lawful and referred **MERC case No.24/2001** order dtd 11.02.2003 and **case No. 42 of 2015** order dtd. 13.05.2016 wherein it is held that no retrospective recovery can be made due to wrong application of tariff and reclassification and prayed for directing MSEDCL to set aside the bill amounting to Rs. 178200.00 dtd. 20.01.2017, payment of cost Rs.2500, and recovery of loss of revenue from guilty officer as per principle laid down by Hon. The Supreme Court of India in the matter of M.K.Gupta Vrs Lucknow Development Authority. Complainant annexed with complaint spot inspection report dtd. 12.01.2017, letter No. 389 (B) 19.01.2017, complainant's letter dtd. 10.02.2017, relevant tariff orders, CGRF and Ombudsman order.

5. Reply came to be filed on 15.06.2017 by NA-MSEDCL. According to N.A., complainant was billed under LT-V(B) (Industrial) as per letter 1) Flying squad/ 126/389 (B) dated 19.01.2017 and (2) Add.EE/FS/Tech/389 (A) Dated 19.01.2017, whereas complainant was required to be billed under LT-II (Commercial) giving reference of approved tariff order effective from Aug-1 of 2012. NA-MSEDCL enclosed with reply copy of facts and findings of M/S. D.C. Mehta (Petrol pump) giving details of connection such as load, purpose, date of connection, spot inspection dated 12.01.2017, change of category from LTVB to LTII, and unit assessed under section 126. NA-MSEDCL annexed with reply above referred letters with tariff order 19/2012 and CPL from Jan-2010.

6. Shri Ashish Chandarana learned representative for complainant and Shri S.S. Deshpande Dy.E.E. Mangrulpir learned representative NA-MSEDCL were present for hearing scheduled on 29.06.2017. Heard both learned representative for complainant and NA-MSEDCL. Shri Ashish Chandarana urged that NA-MSEDCL in their reply have not denied the facts mentioned in the complaint and have admitted the facts that present grievance pertains to change

of tariff and not pertaining to unauthorised use of Electricity under E.A. 2003 and it is admitted fact on record that complainant's purpose of use " Petrol Pump" is never changed. Complainant's representative further urged that since 1970 the date of connection, NA-MSEDCL applied industrial tariff correctly as classified by commission in respective tariff order and commercial circular dated 11.10.2007 issued by NA-MSEDCL covering petrol pump in commercial category is in contravention to regulation 13 of supply code 2005 where in powers to classify or reclassify vests with MERC. Complainant's representative referred Ombudsman Nagpur order No. 55/2016 decided on 26.04.2017 and CGRF Bhandup order No. 346 Dt. 26.10.2010 in support of their say that section 126 of E.A. 2003 is not justified to be applicable to present grievance and retrospective change of tariff is not justified . Complainant's representative specifically brought to the notice of Forum that though the spot inspection is carried out on 12.01.2017 and provisional assessment on 20.01.2017, NA-MSEDCL have not yet given hearing as per act and not completed the process of final bill and not posted final bill to the CPL of complainant and hence claimed to set aside assessment under section 126 of Electricity Act-2003 and requested to settle grievance on merit. Complainant's representative brought on record MERC case No.24 of 2001 issued on 11.02.2003 and MERC case No. 42 of 2015 issued on 13.05.2016 and urged that " No retrospective recovery of arrears can be allowed on the basis of any abrupt classification of a consumer even though the same might have been pointed out by flying squad. Any reclassification must follow a definite process and the recovery , if any would be prospective only, and same can not be categorised as an escaped billing in the strict sense of the terms to be recovered retrospectively as held by Hon'ble MERC in the order passed dated 11.02.2003 and 13.05.2016. Complainant's representative however not disputed change of tariff to commercial from 12.01.2017 as per current tariff order and requested to allow the complaint with cost.

7. NA-MSEDCL's learned representative Shri S.S. Deshpande Dy.E.E. Mangrulpir urged that use of complainant for petrol pump was authorised as industrial but petrol pumps are categorised in commercial tariff, from 01.08.2012 and applied tariff should have been commercial but by mistake industrial tariff continued to be applied till spot inspection by Flying squad on 12.01.2017. Learned representative however expressed inability to argue on the documents such as MERC order filed on 29.06.2017 by complainant and hence hearing was adjourned up to 05.07.2017 in order to get sufficient time for defence. Learned representative Shri S.S. Deshpande Dy.E.E. Mangrulpir on 05.07.2017 urged that MERC cases brought on record are pertaining to HT consumer and street light and not applicable to present complaint and hence requested Forum to allow MSEDCL to change the tariff from 01.08.2012 as commercial in present grievance with retrospective recovery from 01.08.2012.

8. Heard Shri Ashish Chandarana learned representative for complainant and Shri S.S. Deshpande Dy.E.E. Mangrulpir, the learned representative for NA-MSEDCL. This Forum have gone through complaint on record with documents and reply filed by NA-MSEDCL. In so far as ground of jurisdiction of CGRF is concerned Forum proposes to decide the question of jurisdiction as per regulation 6.2 and 6.8 of MERC (CGRF Ombudsman) regulation-2006 by this order and Forum is of the view that, the grievance made by complainant is well within the jurisdiction of Forum as per regulation 6.2 and 6.8 of MERC (CGRF Ombudsman) regulation-2006.

9. As per MERC (CGRF Ombudsman) regulation-2006 Forum can not entertain a grievance unless complainant approaches IGRC and is aggrieved by the decision of IGRC or no decision is given by IGRC with second proviso to regulation 6.2 of MERC (CGRF Ombudsman) regulation-2006 that intimation given to authority of licensee who are not part of IGRC amounts to intimation to IGRC

unless directed by such authority to complainant to approach IGRC. Forum is satisfied that grievance was submitted to NA-MSEDCL. on 10.02.2017, which is deemed intimation to IGRC and IGR Cell have not decided the grievance till approaching Forum on 26.05.2017, moreover NA-MSEDCL in their reply or deliberation have not opposed the grievance on this count.

10. As per regulation 6.8 of MERC (CGRF Ombudsman) regulation-2006 Forum have jurisdiction to examine the facts and circumstance of the grievance to decide whether grievance Prima Facie falls within the perview of section 126 of Electricity Act-2003 and if it is so, grievance to be excluded from the jurisdiction of CGRF. NA-MSEDCL have not disputed a fact that use for petrol pump was authorised. Forum is of the view that important and essential ingredient 'Dishonest use' or 'unauthorised use' is not present in matter before Forum, so also the process of section 126 of Electricity Act-2003 has not been completed. No opportunity of hearing is given, final bill is still not issued and more importantly N.A. MSEDCL have not denied the complaint and admitted the fact that grievance pertains to applicability of correct tariff by N.A. MSEDCL and requested Forum to allow change of tariff from 01.08.2012. Forum is of the view that grievance prim-facie does not fall within the category of unauthorised use of electricity as per section 126 of Electricity Act-2003 .

11. In view of aforesaid discussion Forum hold that the grievance made by complainant is within the jurisdiction of Forum as per section 6.2 and 6.8 of MERC (CGRF Ombudsman) regulation-2006.

12. It is not disputed by the complainant that Petrol Pump comes under tariff of commercial category from 01.08.2012 but as N.A. MSEDCL reclassified as commercial from 12.01.2017, no retrospective recovery is allowed as claimed by complainant. NA-MSEDCL have also not pursued the case under section 126 of Electricity Act-2003 but claiming plain commercial tariff

applicability from 01.08.2012. So point of dispute to be decided is whether retrospective recovery towards reclassification of tariff is allowed. The principle laid down in the order passed by Honable MERC in case No. 24/2001 that “ (No Retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the auditor. Any reclassification must follow a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorised as escaped billing in the strict sense of the term to be recovered retrospectively”), has been ratified and continues to apply as held in MERC case No. 42/2016. The Forum verified the assessment brought on record by N.A. MSEDCL for Rs. 178200/- and is of the view that ,it is not due to escaped billing but under penal assessment as per section-126 and needs to be set aside. The request of N.A. MSEDCL to allow the change of tariff to commercial from 01.08.2012 cannot be accepted as is not escaped billing but administrative laps on the part of authorities responsible for applying current tariff from 01.08.2012. Forum is of the view that principle laid down by MERC in case No. 24/2001 is applicable from date of inspection on 12.01.2017. Regarding claim of the complainant for cost, it is to mention here that Forum is not convinced with the complainant’s argument for support of claimed cost, hence declined. With these observations forum proceeds to pass following unanimous order.

// ORDER //

1. That the Complaint No.26/2017 is hereby partly allowed.
2. The N.A. MSEDCL is directed to set aside the provisional assessment dated 20.01.2017 amounting Rs. 178200/- , with direction to charge change of tariff prospectively from 12.01.2017.
3. The N.A. MSEDCL is directed to recover the loss of revenue due to application of incorrect tariff from 01.08.2012 from guilty officers of N.A.

MSEDCL after due enquiry as per principle laid down in case of The Supreme Court of India in the matter of M.K.Gupta Vrs Lucknow Development Authority, reported in 1994(i) SCC page 243) .

4. The parties to bear their own cost.
5. The N.A. MSEDCL is directed to submit the compliance report to this Forum within one month from this order.

Sd/-
Member/Secretary

Sd/-
Member (CPO)

Contact details of Electricity Ombudsman appointed by MERC (CGRF&EO) Regulations 2006 under Regulation 10:

THE ELECTRICITY OMBUDSMAN,
Office of Electricity Ombudsman (Nagpur)
Plot No.12, Shrikrupa, Vijaynagar, Chhaoni,
Nagpur-440 013.
Phone : 0712-2596670

No.CGRF /AKZ/ AKL/ 125

Dt. 13/07/2017

To,
The Nodal Officer,
The Executive Engineer
MSEDCL,O&M Division,
WASHIM.

The order passed on 13/07/2017 in the Complaint No. 26/2017 is enclosed herewith for further compliance and necessary action.

**Secretary,
Consumer Grievance Redressal Forum,
MSEDCL, Akola Zone, Akola**

Copy fwcs to:-

- 1) The Superintending Engineer, O&M Circle,MSEDCL, Washim.
- 2) M/S.D.C. Mehata , Petrol pump, Karanja Road, Mangrupir Distt. Washim.